

United States District Court
Eastern District of California

Mauricio R. Munoz,

Petitioner,

vs.

John Marshall, Warden,

Respondent.

No. Civ. S 04-1658 LKK PAN P

Order

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July 12, 2005, the court found petitioner's habeas application contained exhausted and unexhausted claims and dismissed the application with leave to amend and to move to hold these proceedings in abeyance while he pursues available state remedies for his unexhausted claims. See Calderon v. U.S. District Court for N.D. Cal. (Taylor), 134 F.3d 981 (9th Cir. 1998).

Petitioner has filed an amended petition and moves to hold these proceedings in abeyance. Respondent filed no opposition.

1 Before the court can determine whether to grant petitioner's
2 request to stay this action while petitioner exhausts available
3 state remedies, the court must determine whether petitioner had
4 good cause for his failure to exhaust, whether the unexhausted
5 claim is potentially meritorious and whether petitioner engaged
6 in intentionally dilatory litigation tactics. Rhines v. Weber,
7 125 S.Ct. 1528 (2005).

8 Accordingly, within 30 days from the date this order is
9 signed, petitioner shall file and serve an explanation of why
10 this court should stay this action while he exhausts available
11 state remedies. Respondent has 15 days to file and serve an
12 opposition or notice of non-opposition. Petitioner's failure to
13 comply with this order will result in the court permitting
14 petitioner to delete the unexhausted claim and to proceed on the
15 other claims.

16 Dated: November 8, 2005.

17 /s/ Peter A. Nowinski

18 PETER A. NOWINSKI

19 Magistrate Judge
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